APPENDIX A.

Pertinent Sections of Trade-Mark Act of 1905
(U. S. C. Title 15 §§ 85, 96, 98, 101)

"§ 85. Trade-marks which may be registered.

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" * * * *Provided*, That no mark which consists * * * merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, * * * shall be registered under the terms of this subdivision of this chapter: * * * *and provided further*, That nothing herein shall prevent the registration of any mark used by the applicant or his predecessors, or by those from whom title to the mark is derived, in commerce with foreign nations or among the several States or with Indian tribes which was in actual and exclusive use as a trade-mark of the applicant, or his predecessors from whom he derived title, for ten years next preceding February 20, 1905: * * *.

* * *

"§ 96. Evidence of ownership; infringement, and damages therefor.

"The registration of a trade-mark under the provisions of this subdivision of this chapter shall be prima facie evidence of ownership. Any person who shall, without the consent of the owner thereof, reproduce, counterfeit, copy, or colorably imitate any such trade-mark and affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration, or to labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registration, and shall use, or shall have used, such reproduction, counterfeit, copy, or

colorable imitation in commerce among the several States, or with a foreign nation, or with the Indian tribes, shall be liable to an action for damages therefor at the suit of the owner thereof; and whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment therein for any sum above the amount found by the verdict as the actual damages, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs. Feb. 20, 1905, c. 592 § 16, 33. Stat. 728.

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"§ 98. Review by Supreme Court.

"Writs of certiorari may be granted by the Supreme Court of the United States for the review of cases arising under this subdivision of this chapter in the same manner as provided by section 347 of Title 28, Judicial Code and Judiciary. Feb. 20, 1905, c. 592, § 18, 33 Stat. 729.

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§ 99. Injunctions; recovery and assessment of damages.

"The several courts vested with jurisdiction of cases arising under this subdivision of this chapter shall have power to grant injunctions, according to the course and principles of equity, to prevent the violation of any right of the owner of a trade-mark registered under said subdivision, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for wrongful use of a trademark the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction. The court shall have the same power to increase such damages, in its discretion, as is given by section 96 of this chapter for increasing damages found by verdict in ac-

tions of law; and in assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost which are claimed. Feb. 20, 1905, c. 592 § 19, 33 Stat. 729.

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"§ 101. Restrictions on actions for infringement.

"No action or suit shall be maintained under the provisions of this subdivision of this chapter in any case when the trade-mark is used in unlawful business, or upon any article injurious in itself, or which mark has been used with the design of deceiving the public in the purchase of merchandise, or has been abandoned, or upon any certificate of registration fraudulently obtained. Feb. 20, 1905, c. 592, § 21, 33 Stat. 729."

APPENDIX B.

Pertinent portions of the trial testimony of Dr. William Norman Brown, Professor of Sanskrit, University of Pennsylvania.

Mr. Beeken:

Q. I show you one of plaintiff's game sets, bearing the notation 'Parcheesi,' and which has been marked Plaintiff's Exhibit ABH, and would ask you if you are familiar with it, and, if so, please relate the circumstances under which you became acquainted with plaintiff's game bearing this notation.

* * *

A. I am familiar with the game. When I was 7 years old, Christmas of 1899, I received a game Parcheesi, a set of Parcheesi, as a present, and I have been familiar with it since. I kept it for a good many years because I went to India the following summer, August of 1900, and took it with me and played with it a great deal there. I left it in India when I came back at the age of 13.

Q. You say you took the game set of Parcheesi

with you to India. Will you please tell us your experience in playing with it in India?

* * *

A. I played the game in India with my sister, older than I, and sometimes with my parents and sometimes with other American children or with children of English descent. I tried sometimes to play this game with Indians because the game was marked 'A Royal Game of India,' and that had interested me as a child, the fact that it was a game of India, and I assumed that the Indians would know something about it, when I went out there. I had very vague notions of India, of course, but I had been interested in that one fact that I owned something Indian before I went to India, but I can remember that when I tried to play with Indians, not very many times, that we never arrived at any successful conclusion of the game because we couldn't understand each other. They weren't used to playing the game as I played it because, of course, I used a pair of dice which are given with the game and the servants, the few that I tried it with, who seemed to think they knew something about it, wanted to play with Cowries, shells. A Cowrie is a small shell which is used as a very low unit of money. They wanted to play with Cowries, and I knew nothing about the use of Cowries, so that the playing of the game by me with Indians was entirely unsuccessful.

Mr. Beeken:

Q. Do you remember whether or not you had a set of rules with you?

A. Yes, I had a set of rules.

Q. As part of your game set?

A. Yes, and, of course, I naturally took those rules to be correct, and when they thought of something different from those rules, that seemed to me to be incorrect. I am afraid that I wasn't open to very much argument with them.

Q. Have you an Indian Hindi game set of Pachisi? If so, will you please produce and explain it?

A. May I just put this here?

Q. Yes.

The Court: Yes, you may.

A. Now, I have brought along one that belongs to the University of Pennsylvania Museum. This is the cloth on which the game is played. Would you like me to spread it out somewhere?

The Court: You may spread it out.

A. These are some of the men, and these are the Cowries, shells, which we used for playing the game. The University of Pennsylvania Museum has owned this for a number of years. At one time there were five shells. One has been lost, so now only four are here. The Museum records show that there were five, and that is the set. They are loaded with lead.

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The Court: May I interrupt you a moment?

Q. The shells, Cowries, as you call them, do they have spots marked on them similar to the dice have, different spots?

A. No. The method of counting is determined by the number of openings or tops that fall.

Q. In other words, that roll that you just made there, that would count one, assuming that the fourth one was down like that; is that it?

A. I can't remember what that counts. I don't remember what that counts.

Mr. Beeken: We have a reference here that shows exactly the different counts.

The Court: All right go ahead.

• • •

Q. Now, what does the Hindi word Pachisi mean?

A. The Hindi word Pachisi means something that has in it 25, has in it the character and quality of 25. That is its fundamental meaning, and it is so used normally throughout the language.

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Q. Does the Hindi word Pachisi always mean the game and nothing else?

A. No. As a matter of fact, as I said, it means anything, any collection of 25 objects. One of the best known usages of Pachisi is in the title of a very well-known work called the 'Baital-Pachisi.' That means the 25 stories of a goblin. 'Baital' means goblin or vampire, and the 'Pachisi' means the 25. Literally it means the goblin 25 collection, and it is a collection of 25 stories alleged to have been told to a mythical king by a demon inhabiting a corpse which the king was trying to carry for an ascetic from one spot to another.

Q. Is it used in any other connection in the language?

A. Oh, yes.

Q. Give us some other instances.

A. It is used to indicate, as I say, a group of any 25. It may be used to indicate a group of 25 years, especially the first 25 years of a person's life, the first quarter century of one's life. There is also a rather peculiar usage which I remember puzzled me very much once when I was a child, in which in buying cheap things, like fruit, or in this case it happens to be bundles of grass we were buying to store up for our horse and buffalo, they are sold not by the hundred but by the 125, by the 5 Pachisi; that is to say, because the object is so cheap, when you buy a hundred, you pay for a hundred, you really get 125.

The Court:

Q. They throw in an extra 25?

A. Yes.

Mr. Beeken:

Q. Like a baker's dozen?

A. It is like a baker's dozen. I can remember when I was 9 years old and found there was a quarrel between our servants and some villagers who were selling this grass, and they were claiming that they weren't getting the full 125 for our hundred. I complained to my father thinking that our servants were being unfair to the villagers, and then my father had

to explain all this to me, that it was an understood thing.

Q. So, as I understand your testimony on this point, Pachisi, the Hindi word Pachisi, might refer to any collection of 25 things like apples or anything else?

A. Yes; oh, quite right.

* * *

Q. Do the Indians ever use dice instead of Cowries in playing their games?

A. They play the game of Chaupar with dice. Now, the dice which they use are not the same as our dice. We use cubical dice, but the dice which they use for Chaupar are stick dice, and I borrowed a set of those from the University of Pennsylvania Museum and brought them along, if you care to look at them. These dice are marked, of course, on only four sides. They are 6-sided, obviously, but the two ends have no significance and the markings are only on the four sides, and you will see that they are marked 1 and 2 and 5 and 6.

Q. Do those dice belong to the Museum too?

A. They belong to the Museum and I borrowed them.

Q. I believe that you have a photograph of the dice which I would like to offer in evidence, if I may.

A. Yes. That is a photograph of these three dice.

Mr. Farmer: No objection.

Mr. Beeken: I offer that in evidence as Plaintiff's Exhibit HB.

The Court: HB is a photo of the oblong dice, is it?

A. Stick dice or long dice, we speak of them.

The Court: It will be received.

(Said photograph, marked "PLAINTIFF'S EXHIBIT HB", so offered, was thereupon received in evidence.)

Mr. Beeken:

Q. Is it possible to throw a count of 25 with these stick dice?

A. No. The highest count you can throw with them

is 18 because 6 is the largest number on any of them.

Q. The Hindi word Pachisi could not, therefore, be applied to any throw or any count of the throw of stick dice; is that correct?

A. It could not, no.

The Court: Just a minute.

Q. Do you claim this game that they were used with was Chausar or Chaupar?

A. Both. Both names are applied to that game, and I am sorry I didn't mention Chausar when I mentioned Chaupar. Chaupar is the commoner.

Mr. Beeken:

Q. That was just the point I was going to ask, if the game is called Chaupar or Chausar when you use the stick dice; is that correct?

A. That is true, yes.

Q. Now, you have mentioned the words 'Chausar' and 'Chaupar.' What is the meaning of these words, if you know?

A. Well, 'Chaupar' is applied to this board. I am calling it 'board' here; of course, it is a cloth. It is the surface or object used for the playing of the game Chaupar, and it means that which has four sections, each one of which is called 'par'. The first part of it means four; 'Chau' means four, and 'par' is the name of each one of those sections.

Q. Each one of the arms?

A. Each arm, yes, and the same is true with Chausar, and the word 'Chausar' means that which has four 'sars', four parts, each called a 'sar'. Chausar may be used for more things than just this board.

Q. What is the name of this board. is it Chaupar or Chausar or Pachisi?

A. Well, the board is Chaupar or Chausar. The board wouldn't be called Pachisi.

Q. And you say that the meaning of those words is that which has four limbs or four sections, or something like that. Is there any analogy to our game of baseball?

A. Well, yes. We play a game called baseball because it has bases.

Q. And it gets its name from that striking characteristic of the game; is that the point?

A. That is right.

Q. And so with the Chausar or Chaupar cloth board?

A. Yes.

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The Court: Let me see if I am certain about this.

Q. Then if you use these shells which are—what do you call them?

A. Cowries.

Q. Then when you use shells or Cowries, then the game would be known as Pachisi?

A. That is right.

Q. And in that kind of game a total of 25 could be thrown?

A. Yes.

Q. But if you use the stick dice, then you get into the other game of Chaupar?

A. That is right.

Q. Or Chausar?

A. Yes.

Q. And in that kind of a game 25 could not be thrown?

A. That is right.

The Court: All right.